(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* DIONISIO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 71-229. Argued November 6, 1972—Decided January 22, 1972

A grand jury subpoenaed about 20 persons, including respondent, to give voice exemplars for identification purposes. Respondent, on Fourth and Fifth Amendment grounds, refused to comply. The District Court rejected both claims and adjudged respondent in contempt. The Court of Appeals agreed in rejecting respondent's Fifth Amendment claim but reversed on the ground that the Fourth Amendment required a preliminary showing of reasonableness before a grand jury witness could be compelled to furnish a voice exemplar and that here the proposed "seizures" would be unreasonable because of the large number of witnesses subpoenaed to produce the exemplars. *Held:*

1. The compelled production of the voice exemplars would not violate the Fifth Amendment privilege against compulsory self-incrimination, since they were to be used only for identification purposes, and not for the testimonial or communicative content of the utterances. Pp. 4–6.

2. Respondent's Fourth Amendment claim is also invalid. Pp. 6–16.

(a) A subpoena to compel a person to appear before a grand jury does not constitute a "seizure" within the meaning of the Fourth Amendment, and the fact that many others besides respondent were ordered to give voice recordings did not render the subpoena unconstitutional. *Davis* v. *Mississippi*, 394 U. S. 721, distinguished. Pp. 6–12.

(b) The grand jury's directive to make the voice recording infringed no valid Fourth Amendment interest. Pp. 12–14.

(c) Since neither the summons to appear before the grand jury, nor its directive to give a voice exemplar contravened the Fourth Amendment, the Court of Appeals erred in requiring a

Syllabus

preliminary showing of reasonableness before respondent could be compelled to furnish the exemplar. P. 14.

442 F. 2d 276, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. BRENNAN, J., filed an opinion concurring in part and dissenting in part. DOUGLAS and MARSHALL, JJ., filed dissenting opinions.

SUPREME COURT OF THE UNITED STATES

No. 71-229

United States, Petitioner, *v.* Antonio Dionisio. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 22, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

A special grand jury was convened in the Northern District of Illinois in February 1971, to investigate possible violations of federal criminal statutes relating to gambling. In the course of its investigation the grand jury received in evidence certain voice recordings that had been obtained pursuant to court orders.[1]

The grand jury subpoenaed approximately 20 persons, including the respondent Dionisio, seeking to obtain from them voice exemplars for comparison with the re-

[1] The court orders were issued pursuant to 18 U. S. C. § 2518, a statute authorizing the interception of wire communications upon a judicial determination that "(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter [including the transmission of wagering information]; (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception; (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; (d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person."

corded conversations that had been received in evidence. Each witness was advised that he was a potential defendant in a criminal prosecution. Each was asked to examine a transcript of an intercepted conversation, and to go to a nearby office of the United States Attorney to read the transcript into a recording device. The witnesses were advised that they would be allowed to have their attorneys present when they read the transcripts. Dionisio and other witnesses refused to furnish the voice exemplars, asserting that these disclosures would violate their rights under the Fourth and Fifth Amendments.

The Government then filed separate petitions in the United States District Court to compel Dionisio and the other witnesses to furnish the voice exemplars to the grand jury. The petitions stated that the exemplars were "essential and necessary" to the grand jury investigation, and that they would "be used solely as a standard of comparison in order to determine whether or not the witness is the person whose voice was intercepted . . . ."

Following a hearing, the district judge rejected the witnesses' constitutional arguments and ordered them to comply with the grand jury's request. He reasoned that voice exemplars, like handwriting exemplars or fingerprints, were not testimonial or communicative evidence, and that consequently the order to produce them would not compel any witness to testify against himself. The district judge also found that there would be no Fourth Amendment violation, because the grand jury subpoena did not itself violate the Fourth Amendment, and the order to produce the voice exemplars would involve no unreasonable search and seizure within the proscription of that Amendment:

> "The witnesses are lawfully before the grand jury pursuant to subpoena. The Fourth Amendment prohibition against unreasonable search and seizure applies only where identifying physical character-

istics, such as fingerprints, are obtained as a result of unlawful detention of a suspect, or when an intrusion into the body, such as a blood test, is undertaken without a warrant, absent an emergency situation. *E. g., Davis* v. *Mississippi*, 394 U. S. 721, 724–728 (1969); *Schmerber* v. *California*, 384 U. S. 757, 770–771 (1966)." [2]

When Dionisio persisted in his refusal to respond to the grand jury's directive, the District Court adjudged him in civil contempt and ordered him committed to custody until he obeyed the court order, or until the expiration of 18 months.[3]

The Court of Appeals for the Seventh Circuit reversed. 442 F. 2d 276. It agreed with the District Court in rejecting the Fifth Amendment claims,[4] but concluded that to compel the voice recordings would violate the Fourth Amendment. In the Court's view, the grand jury was "seeking to obtain the voice exemplars of the witnesses by the use of its subpoena powers because probable cause did not exist for their arrest or for some other, less unusual, method of compelling the production of the exemplars." *Id.*, at 280. The Court found that the Fourth Amendment applied to grand jury process, and that "under the fourth amendment law enforcement officials may not compel the production of physical evidence absent a showing of the reasonableness of the seizure. *Davis* v. *Mississippi*, 394 U. S. 721 . . . ." *Ibid.*

In *Davis* this Court held that it was error to admit the petitioner's fingerprints into evidence at his trial for

[2] The decision of the District Court is unreported.

[3] The life of the special grand jury was 18 months, but could be extended for an additional 18 months. 18 U. S. C. § 3331.

[4] The Court also rejected the argument that the grand jury procedure violated the witnesses' Sixth Amendment right to counsel. It found the contention particularly without merit in view of the option afforded the witnesses to have their attorneys present while they made the voice recordings. 442 F. 2d 276, 278.

rape, because they had been obtained during a police detention following a lawless wholesale roundup of the petitioner and more than 20 other youths. Equating the procedures followed by the grand jury in the present case to the fingerprint detentions in *Davis*, the Court of Appeals reasoned that "[t]he dragnet effect here, where approximately 20 persons were subpoenaed for purposes of identification, has the same invidious effect on fourth amendment rights as the practice condemned in *Davis*." *Id.*, at 281.

In view of a clear conflict between this decision and one in the Court of Appeals for the Second Circuit,[5] we granted the Government's petition for certiorari. 406 U. S. 956.

I

The Court of Appeals correctly rejected the contention that the compelled production of the voice exemplars would violate the Fifth Amendment. It has long been held that the compelled display of identifiable physical characteristics infringes no interest protected by the privilege against compulsory self-incrimination. In *Holt* v. *United States*, 218 U. S. 245, 252, Mr. Justice Holmes, writing for the Court, dismissed as an "extravagant extension of the Fifth Amendment" the argument that it violated the privilege to require a defendant to put on a blouse for identification purposes. He explained that "the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material." *Id.*, at 252–253.

[5] *United States* v. *Doe* (*Schwartz*), 457 F. 2d 895 (affirming civil contempt judgment against grand jury witness for refusal to furnish handwriting exemplars).

More recently, in *Schmerber* v. *California*, 384 U. S. 757, we relied on *Holt*, and noted that

> "both federal and state courts have usually held that [the privilege] offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture. The distinction which has emerged, often expressed in different ways, is that the privilege is a bar against compelling 'communications' or 'testimony,' but that compulsion which makes a suspect or accused the source of 'real or physical evidence' does not violate it." *Id.*, at 764 (footnote omitted).

The Court held that the extraction and chemical analysis of a blood sample involved no "shadow of testimonial compulsion upon or enforced communication by the accused." *Id.*, at 765.

These cases led us to conclude in *Gilbert* v. *California*, 388 U. S. 263, that handwriting exemplars were not protected by the privilege against compulsory self-incrimination. While "[o]ne's voice and handwriting are, of course, means of communication," we held that a "mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside its protection." *Id.*, at 267. And similarly in *United States* v. *Wade*, 388 U. S. 218, we found no error in compelling a defendant accused of bank robbery to utter in a line-up words that had allegedly been spoken by the robber. The accused there was "required to use his voice as an identifying physical characteristic, not to speak his guilt." *Id.*, at 222–223.

Wade and *Gilbert* definitively refute any contention that the compelled production of the voice exemplars in this case would violate the Fifth Amendment. The

voice recordings were to be used solely to measure the physical properties of the witnesses' voices, not for the testimonial or communicative content of what was to be said.[6]

II

The Court of Appeals held that the Fourth Amendment required a preliminary showing of reasonableness before a grand jury witness could be compelled to furnish a voice exemplar, and that in this case the proposed "seizures" of the voice exemplars would be unreasonable because of the large number of witnesses summoned by the grand jury and directed to produce such exemplars. We disagree.

The Fourth Amendment guarantees that all people shall be "secure in their persons, houses, papers, and

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[6] The Court of Appeals for the Seventh Circuit appears to have recanted somewhat from its clear and correct holding in the present case that the compelled production of voice exemplars would not violate the privilege against compulsory self-incrimination. In subsequently explaining that holding, the Court qualified it:

"Nevertheless, the witnesses were potential defendants, and since the purpose of the voice exemplars was to identify the voices obtained by FBI agents pursuant to a court-ordered wiretap, the self-incriminatory impact of the compelled exemplars was clear. Thus the compelled exemplars were at odds with the spirit of the Fifth Amendment. Because the Fifth Amendment illuminates the Fourth (see . . . Boyd v. United States [116 U. S. 616] . . .), the Fourth Amendment violation appears more readily than where immunity is granted, and in *Dionisio* immunity had not yet been granted." *Fraser* v. *United States*, 452 F. 2d 616, 619 n. 5.

But *Boyd* dealt with the compulsory production of private books and records, testimonial sources, a circumstance in which the "Fourth and Fifth Amendments run almost into each other." 116 U. S., at 630. In the present case, by contrast, no Fifth Amendment interests are jeopardized, there is no hint of testimonial compulsion. The Court of Appeals' subsequent attempt to read the "spirit of the Fifth Amendment" into the production of voice exemplars cannot survive comparison with *Wade*, *Gilbert*, and *Schmerber*.

effects, against unreasonable searches and seizures . . . ." Any Fourth Amendment violation in the present setting must rest on a lawless governmental intrusion upon the privacy of "persons" rather than on interference with "property relationships or private papers." *Schmerber* v. *California*, 384 U. S. 757, 767; see *United States* v. *Doe* (Schwartz), 457 F. 2d 895, 897. In *Terry* v. *Ohio*, 392 U. S. 1, the Court explained the protection afforded to "persons" in terms of the statement in *Katz* v. *United States*, 389 U. S. 347, that "the Fourth Amendment protects people, not places," *id.*, at 351, and concluded that "wherever an individual may harbor a reasonable 'expectation of privacy,' . . . he is entitled to be free from unreasonable governmental intrusion." *Terry* v. *Ohio*, 392 U. S., at 9.

As the Court made clear in *Schmerber*, *supra*, the obtaining of physical evidence from a person involves a potential Fourth Amendment violation at two different levels—the "seizure" of the "person" necessary to bring him into contact with government agents, see, *Davis* v. *Mississippi*, 394 U. S. 721, and the subsequent search for and seizure of the evidence. In *Schmerber* we found the initial seizure of the accused justified as a lawful arrest, and the subsequent seizure of the blood sample from his body reasonable in light of the exigent circumstances. And in *Terry*, we concluded that neither the initial seizure of the person, an investigatory "stop" by a policeman, nor the subsequent search, a pat down of his outer clothing for weapons, constituted a violation of the Fourth and Fourteenth Amendments. The constitutionality of the compulsory production of exemplars from a grand jury witness necessarily turns on the same dual inquiry—whether either the initial compulsion of the person to appear before the grand jury, or the subsequent directive to make a voice recording is an unreasonable "seizure" within the meaning of the Fourth Amendment.

It is clear that a subpoena to appear before a grand jury is not a "seizure" in the Fourth Amendment sense, even though that summons may be inconvenient or burdensome. Last Term we again acknowledged what has long been recognized,[7] that "[c]itizens generally are not constitutionally immune from grand jury subpoenas . . . ." *Branzburg* v. *Hayes*, 408 U. S. 665, 682. We concluded that:

> "[a]lthough the powers of the grand jury are not unlimited and are subject to the supervision of a judge, the longstanding principle that 'the public . . . has a right to every man's evidence,' except for those persons protected by a constitutional, common-law, or statutory privilege, *United States* v. *Bryan*, 339 U. S., at 331; *Blackmer* v. *United States*, 284 U. S. 421, 438 (1932); 8 J. Wigmore, Evidence § 2192 (McNaughton rev. 1961), is particularly applicable to grand jury proceedings." *Id.*, at 688.

These are recent reaffirmations of the historically grounded obligation of every person to appear and give his evidence before the grand jury. "The personal sacrifice involved is a part of the necessary contribution of the individual to the welfare of the public." *Blair* v. *United States*, 250 U. S. 273, 281. See also *Garland* v. *Torre*, 259 F. 2d 545, 549. And while the duty may be "onerous" at times, it is "necessary to the administration of justice." *Blair* v. *United States*, *supra*, at 281.[8]

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[7] See generally *Kastigar* v. *United States*, 406 U. S. 441, 443–444; *Blair* v. *United States*, 250 U. S. 273, 279–281; 8 J. Wigmore, Evidence § 2191 (J. McNaughton rev. 1961).

[8] The obligation to appear is no different for a person who may himself be the subject of the grand jury inquiry. See *United States* v. *Doe* (*Schwartz*), 457 F. 2d 895, 898; *United States* v. *Winter*, 348 F. 2d 204, 207–208.

The compulsion exerted by a grand jury subpoena differs from the seizure effected by an arrest or even an investigative "stop" in more than civic obligation. For, as Judge Friendly wrote for the Court of Appeals for the Second Circuit:

> "The latter is abrupt, is effected with force or the threat of it and often in demeaning circumstances, and, in the case of arrest, results in a record involving social stigma. A subpoena is served in the same manner as other legal process; it involves no stigma whatever; if the time for appearance is inconvenient, this can generally be altered; and it remains at all times under the control and supervision of a court." *United States* v. *Doe (Schwartz)* 457 F. 2d 895, 898.

Thus the Court of Appeals for the Seventh Circuit correctly recognized in a case subsequent to the one now before us, that a "grand jury subpoena to testify is not that kind of governmental intrusion on privacy against which the Fourth Amendment affords protection, once the Fifth Amendment is satisfied." *Fraser* v. *United States*, 452 F. 2d 616, 620; cf. *United States* v. *Weinberg*, 439 F. 2d 743, 748–749.

This case is thus quite different from *Davis* v. *Mississippi*, *supra*, on which the Court of Appeals primarily relied. For in *Davis* it was the initial seizure—the lawless dragnet detention—that violated the Fourth and Fourteenth Amendments—not the taking of the fingerprints. We noted that "[i]nvestigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention," 394 U. S., at 726, and we left open the question whether, consistently with the Fourth and Fourteenth Amendments, narrowly circumscribed procedures might be developed for obtaining fingerprints from people when

there was no probable cause to arrest them. *Id.*, at 728.[9] *Davis* is plainly inapposite to a case where the initial restraint does not itself infringe the Fourth Amendment.

This is not to say that a grand jury subpoena is some talisman that dissolves all constitutional protections. The grand jury cannot require a witness to testify against himself. It cannot require the production by a person of private books and records that would incriminate him. See *Boyd* v. *United States*, 116 U. S. 616, 633–635.[10] The Fourth Amendment provides protection against a grand jury subpoena *duces tecum* too sweeping in its terms "to be regarded as reasonable." *Hale* v. *Henkel*, 201 U. S. 43, 76; cf. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 208, 217. And last Term, in the context of a First Amendment claim, we indicated that the Constitution could not tolerate the transformation of the grand jury into an instrument of oppression: "Official harassment of the press undertaken not for purposes of law enforcement but to disrupt a reporter's relationship with his news sources would have no justification. Grand juries are subject to judicial control and subpoenas to motions to quash. We do not expect courts will forget that grand juries must operate within the limits of the First Amendment as well as

[9] Judge Weinfeld correctly characterized *Davis* as "but another application of the principle that the Fourth Amendment applies to all searches and seizures of the person, no matter what the scope or duration. It held that in the circumstances there presented the detention for the sole purpose of fingerprinting was in violation of the Fourth Amendment ban against unreasonable search and seizure." *Thom* v. *New York Stock Exchange*, 306 F. Supp. 1002, 1007 (footnote omitted). See also *Allen* v. *Cupp*, 426 F. 2d 756, 760.

[10] While *Boyd* was concerned with a motion to produce invoices at a forfeiture trial, the Court treated it as the equivalent of a subpoena *duces tecum*, and *Hale* v. *Henkel*, 201 U. S. 43, 76, applied *Boyd* in the context of a grand jury subpoena.

the Fifth." *Branzburg* v. *Hayes*, 408 U. S. 665, 707–708. See also, *id.*, at 710 (POWELL, J., concurring).

But we are here faced with no such constitutional infirmities in the subpoena to appear before the grand jury or in the order to make the voice recordings. There is, as we have said, no valid Fifth Amendment claim. There was no order to produce private books and papers, and no sweeping subpoena *duces tecum*. And even if *Branzburg* be extended beyond its First Amendment moorings and tied to a more generalized due process concept, there is still no indication in this case of the kind of harassment that was of concern there.

The Court of Appeals found critical significance in the fact that the grand jury had summoned approximately 20 witnesses to furnish voice exemplars.[11] We think that fact is basically irrelevant to the constitutional issues here. The grand jury may have been attempting to identify a number of voices on the tapes in evidence, or it might have summoned the 20 witnesses in an effort to identify one voice. But whatever the case, "[a] grand jury's investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed . . . ." *United States* v. *Stone*, 429 F. 2d 138, 140. See also *Wood* v. *Georgia*, 370 U. S. 375, 392. As the Court recalled last Term, "Because its task is to inquire into the existence of possible criminal conduct and to return only well-founded indictments, its investigative powers are necessarily broad." *Branzburg* v.

[11] As noted above, *ante*, p. —, there is no valid comparison between the dententions of the 24 youths in *Davis*, and the grand jury subpoenas to the witnesses here. While the dragnet detentions by the police did constitute substantial intrusions into the Fourth and Fourteenth Amendment rights of each of the youths in *Davis*, no person has a justifiable expectation of immunity from a grand jury subpoena.

Hayes, 408 U. S., at 688.[12] The grand jury may well find it desirable to call numerous witnesses in the course of an investigation. It does not follow that each witness may resist a subpoena on the ground that too many witnesses have been called. Neither the order to Dionisio to appear, nor the order to make a voice recording was rendered unreasonable by the fact that many others were subjected to the same compulsion.

But the conclusion that Dionisio's compulsory appearance before the grand jury was not an unreasonable "seizure" is the answer to only the first part of the Fourth Amendment inquiry here. Dionisio argues that the grand jury's subsequent directive to make the voice recording was itself an infringement of his rights under the Fourth Amendment. We cannot accept that argument.

In *Katz* v. *United States*, *supra*, we said that the Fourth Amendment provides no protection for what "a person knowingly exposes to the public, even in his home or office . . . ." 389 U. S. 347, 351. The physical characteristics of a person's voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. Like a man's facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect

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[12] "[The grand jury] is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning. *Hendricks* v. *United States*, 223 U. S. 178, 184." *Blair* v. *United States*, 250 U. S. 273, 282.

that his face will be a mystery to the world. As the Court of Appeals for the Second Circuit stated:

> "Except for the rare recluse who chooses to live his life in complete solitude, in our daily lives we constantly speak and write, and while the content of a communication is entitled to Fourth Amendment protection, . . . the underlying identifying characteristics—the constant factor throughout both public and private communications—are open for all to see or hear. There is no basis for constructing a wall of privacy against the grand jury which does not exist in casual contacts with strangers. Hence, no intrusion into an individual's privacy results from compelled execution of handwriting or voice exemplars; nothing is being exposed to the grand jury that has not previously been exposed to the public at large." *United States* v. *Doe (Schwartz)*, 457 F. 2d 895, 898–899.

The required disclosure of a person's voice is thus immeasurably further removed from the Fourth Amendment protection than was the intrusion into the body effected by the blood extraction in *Schmerber*. "The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained." *Schmerber* v. *California*, 384 U. S. 757, 769–770. Similarly, a seizure of voice exemplars does not involve the "severe, though brief, intrusion upon cherished personal security," effected by the "patdown" in *Terry*—"surely . . . an annoying, frightening, and perhaps humiliating experience." *Terry* v. *Ohio*, 392 U. S. 1, 24–25. Rather, this is like the fingerprinting in *Davis*, where, though the initial dragnet detentions were constitutionally impermissible, we noted that the fingerprinting itself, "involves none of the probing into an individual's private life and thoughts that marks an interrogation or search." *Davis*

v. *Mississippi*, 394 U. S. 721, 727; cf. *Thom* v. *New York Stock Exchange*, 306 F. Supp. 1002, 1009.

Since neither the summons to appear before the grand jury, nor its directive to make a voice recording infringed upon any interest protected by the Fourth Amendment, there was no justification for requiring the grand jury to satisfy even the minimal requirement of "reasonableness" imposed by the Court of Appeals.[13] See *United States* v. *Doe (Schwartz)*, 457 F. 2d 895, 899–900. A grand jury has broad investigative powers to determine whether a crime has been committed and who has committed it. The jurors may act on tips, rumors, evidence offered by the prosecutor, or their own personal knowledge. *Branzburg* v. *Hayes*, 408 U. S. 665, 701. No grand jury witness is "entitled to set limits to the investigation that the grand jury may conduct." *Blair* v. *United States*, 250 U. S. 273, 282. And a sufficient basis for an indictment may only emerge at the end of the investigation when all the evidence has been received.

> "It is impossible to conceive that . . . the examination of witnesses must be stopped until a basis is laid by an indictment formally preferred, when the very object of the examination is to ascertain who shall be indicted." *Hale* v. *Henkel*, 201 U. S. 43, 65.

Since Dionisio raised no valid Fourth Amendment claim, there is no more reason to require a preliminary showing of reasonableness here than there would be in the case of any witness who, despite the lack of any constitutional or statutory privilege, declined to answer

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[13] In *Hale* v. *Henkel*, 201 U. S. 43, 77, the Court found that such a standard had not been met, but as noted above, *ante*, p. —, that was a case where the Fourth Amendment had been infringed by an overly broad subpoena to produce books and papers.

a question or comply with a grand jury request. Neither the Constitution nor our prior cases justify any such interference with grand jury proceedings.[14]

The Fifth Amendment guarantees that no civilian may be brought to trial for an infamous crime "unless on a presentment or indictment of a Grand Jury." This constitutional guarantee presupposes an investigative body "acting independently of either prosecuting attorney or judge," *Stirone* v. *United States*, 361 U. S. 212, 218, whose mission is to clear the innocent, no less than to bring to trial those who may be guilty.[15] Any holding

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[14] MR. JUSTICE MARSHALL in dissent suggests that a preliminary showing of "reasonableness" is required where the grand jury subpoenas a witness to appear and produce handwriting or voice exemplars, but not when it subpoenas him to appear and testify. Such a distinction finds no support in the Constitution. The dissent argues that there is a potential Fourth Amendment violation in the case of a subpoenaed grand jury witness because of the asserted intrusiveness of the initial subpoena to appear—the possible stigma from a grand jury appearance and the inconvenience of the official restraint. But the initial directive to appear is as intrusive if the witness is called simply to testify as it is if he is summoned to produce physical evidence.

[15] "[T]he institution was adopted in this country, and is continued from considerations similar to those which give to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offences upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from government, or be prompted by partisan passion or private enmity. No person shall be required, according to the fundamental law of the country, except in the cases mentioned, to answer for any of the higher crimes unless this body, consisting of not less than sixteen nor more than twenty-three good and lawful men, selected from the body of the district, shall declare, upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial." *Ex parte Bain*, 121 U. S. 1, 11 (quoting grand jury charge of Justice Field). See also *Wood* v. *Georgia*, 370 U. S. 375, 390.

that would saddle a grand jury with mini-trials and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws. Cf. *United States v. Ryan*, 402 U. S. 530, 532–533; *Costello* v. *United States*, 350 U. S. 359, 363–364; *Cobbledick* v. *United States*, 309 U. S. 323, 327–328.[16] The grand jury may not always serve its historic role as a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor, but if it is even to approach the proper performance of its constitutional mission, it must be free to pursue its investigations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witness called before it.

Since the Court of Appeals found an unreasonable search and seizure where none existed, and imposed a preliminary showing of reasonableness where none was required, its judgment is reversed and this case is remanded to that Court for further proceedings consistent with this opinion.

It is so ordered.

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[16] The possibilities for delay caused by requiring initial showings of "reasonableness" are illustrated by the Court of Appeals' subsequent decision in *In re September 1971 Grand Jury*, 454 F. 2d 580, rev'd *sub nom. United States* v. *Mara*, *post*, p. —, where the Court held that the Government was required to show in an adversary hearing that its request for exemplars was reasonable, and "reasonableness" included proof that the exemplars could not be obtained from other sources.

SUPREME COURT OF THE UNITED STATES

Nos. 71-229 AND 71-850

United States, Petitioner,
71-229 *v.*
Antonio Dionisio.

United States, Petitioner,
71-850 *v.*
Richard J. Mara aka Richard J. Marasovich.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 22, 1973]

MR. JUSTICE BRENNAN, concurring in part and dissenting in part.

I agree, for the reasons stated by the Court, that petitioners' Fifth Amendment claims are without merit. I dissent, however, from the Court's rejection of petitioners' Fourth Amendment claims as also without merit. I agree that no unreasonable seizure in violation of the Fourth Amendment is effected by a grand jury subpoena limited to requiring the appearance of a suspect to *testify*. But insofar as the subpoena requires a suspect's appearance in order to obtain his voice or handwriting exemplars from him, I conclude, substantially in agreement with Part II of my Brother MARSHALL's dissent, that the reasonableness under the Fourth Amendment of such a seizure cannot simply be presumed. I would therefore affirm the judgments of the Court of Appeals reversing the contempt convictions and remand with directions to the District Court to afford the Government the opportunity to prove reasonableness under the standard fashioned by the Court of Appeals.

SUPREME COURT OF THE UNITED STATES

Nos. 71–229 AND 71–850

United States, Petitioner, 71–229 *v.* Antonio Dionisio. United States, Petitioner, 71–850 *v.* Richard J. Mara aka Richard J. Marasovich.	On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 22, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Judge William Campbell, who has been on the District Court in Chicago for over 32 years, recently made the following indictment against the grand jury: [1]

> "This great institution of the past has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today it is but a convenient tool for the prosecutor—too often used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything before any grand jury."

It is indeed common knowledge that the grand jury, having been conceived as a bulwark between the citizen and the Government, is now a tool of the Executive. The concession by the Court that the grand jury is no longer in a realistic sense "a protective bulwark standing solidly between the ordinary citizen and over-zealous prosecutor" is reason enough to affirm these judgments.

It is not uncommon for witnesses summoned to appear

[1] 55 Fed. Rules Dec. 229, 253 (1972).

before the grand jury at a designated room to discover that the room is the room of the prosecutor. The cases before us today are prime examples of this perversion.

Respondent Dionisio and approximately 19 others were subpoenaed by the Special February 1971 Grand Jury for the Northern District of Illinois in an investigation of illegal gambling operations. During the investigation the grand jury had received as exhibits voice recordings obtained under court orders, on warrants issued under 18 U. S. C. § 2518 authorizing wiretaps. The witnesses were instructed to go to the U. S. Attorney's office, with their own counsel if they desired, and in the company of an FBI agent who had been appointed as an agent of the grand jury by its foreman, and to read the transcript of the wire interception. The readings were recorded. The grand jury then compared the voices taken from the wiretap and the witnesses' record. Dionisio refused to make the voice exemplars on the grounds they were violating his rights under the Fourth and Fifth Amendments. The Government filed in the United States District Court for the Northern District of Illinois to compel the witnesses to furnish the exemplars to the grand jury. The court rejected the constitutional arguments of the defendants and demanded compliance. Dionisio again refused and was adjudged in civil contempt and placed in prison until he obeyed the court order or until the term of the special grand jury expired. The Court of Appeals reversed, concluding that to compel compliance would violate the Fourth Amendment rights. It held that voice exemplars are protected by the Constitution from unreasonable seizures and that the Government failed to show the reasonableness of its actions.

The Special September 1971 Grand Jury, also in the Northern District of Illinois, was convened to investigate thefts of interstate shipments of goods that occurred

in the State. Respondent Mara was subpoenaed and was requested to submit before the grand jury a sample of his handwriting. Mara refused. The Government went to the District Court for the Northern District of Illinois, asserting to the court that the handwriting exemplars were "essential and necessary" to the investigation. In an "in camera" proceeding, the Court held that the witness must comply with the request of the grand jury. The Court of Appeals reversed on the basis of its decision in *In re Dionisio*. It outlined the procedures the Government must follow in cases of this kind. First, the hearing to determine the constitutionality of the seizure must be held in open court in an adversary manner. Substantially, the Government must show that the grand jury was properly authorized to investigate a matter that Congress had power to regulate, that the information sought was relevant to the inquiry, and that the grand jury's request for exemplars was adequate, but not excessive, for the purposes of the relevant inquiry.

Today, the Court in its majority overrules this reasoned opinion of the Seventh Circuit.

Under the Fourth Amendment law enforcement officers may not compel the production of evidence absent a showing of the reasonableness of the seizure. *Davis* v. *Mississippi*, 394 U. S. 721; *Boyd* v. *United States*, 116 U. S. 616. The test protects the person's expectation of privacy over the thing. We said in *Katz* v. *United States*, "the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not subject of Fourth Amendment protection. But what he seeks to preserve as private, even though in an area accessible to the public, may be constitutionally protected." 389 U. S. 347, 351. The Government asserts that handwriting and voice exemplars do not invade the privacy of an

individual when taken because they are physical characteristics that are exposed to the public. It argues that, unless the person involved is a recluse, these characteristics are not meant to be private to the individual and thus are not subject to the aid of the Fourth Amendment.

This Court has held that fingerprints are subject to the requirements of the Search and Seizure Clause of the Fourth Amendment, *Davis* v. *Mississippi*, 394 U. S. 721. On the other hand, facial scars, birthmarks, and other facial features have been said to be "in plain view" and not protected. *United States* v. *Doe* (*Schwartz*), 457 F. 2d 895.

In *Davis* the sheriff in Mississippi rounded up 24 Blacks when a rape victim described her assailant only as a young Negro. Each was fingerprinted and then released. Davis was presented to the victim but was not identified. He was jailed without probable cause, and only later did the FBI confirm that his fingerprints matched those on the window of the victim's home. The Court held that the fingerprints could not be admitted, as they were seized without reasonable grounds. "Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed "arrest" or "investigatory detentions." *Davis* v. *Mississippi*, 394 U. S. 721, 726–727. The dragnet effect in *Dionisio*, where approximately 20 people were subpoenaed for purposes of identification, was just the kind of invasion that the *Davis* case sought to prevent. Facial features can be presented to the public regardless of the cooperation or compulsion of the owner of the features. But to get the exemplars, the individual must

be involved. So, although a person's handwriting is used in everyday life and speech is the vehicle of normal, social intercourse, when these personal characteristics are sought for purposes of identification, the government enters the zone of privacy and in my view must make a showing of reasonableness before seizures may be made.

The Government contends that since the production was before the grand jury, a different standard of constitutional law exists because the grand jury has broad investigatory powers. *Blair* v. *United States*, 250 U. S. 273. Cf. *United States* v. *Bryan*, 339 U. S. 323. The Government concedes that the Fourth Amendment applies to the grand jury and prevents it from executing subpoenaes *duces tecum* that are overly broad. *Hale* v. *Henkel*, 201 U. S. 43, 76. It asserts, however, that that is the limit of its application. But the Fourth Amendment is not so limited, as this Court has held in *Davis, supra*, and reiterated in *Terry* v. *Ohio*, 392 U. S. 1, where it held that the Amendment comes into effect whether or not there is a fullblown search. The essential purpose is to extend its protection "wherever an individual may harbor a reasonable 'expectation of privacy.'" 392 U. S. 1, 9.

Just as the nature of the Amendment rebels against the limits that the Government seeks to impose on its coverage, so does the nature of the grand jury itself. It was secured at Runnymede from King John as a cornerstone of the liberty of the people. It was to serve as a buffer between the State and the offender. For no matter how obnoxious a person may be, the United States cannot prosecute for a felony without an indictment. The individual is therefore protected by a body of his peers who have no axes to grind or any government agency to serve. It is the only accusatorial body of the Federal Government recognized by the Constitu-

tion. "The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge."[2] *Stirone* v. *United States*, 361 U. S. 212, 218. But here, as the Court of Appeals said, "It is evident that the grand jury is seeking to obtain the voice exemplars of the witnesses by the use of its subpoena powers because probable cause did not exist for their arrest or for some other, less unusual, method of compelling the production of the exemplars." *Dionisio* v. *United States*, 442 F. 2d 276, 280. See *Hannah* v. *Larche*, 363 U. S. 420, 497–499 (dissenting opinion). Are we to stand still and watch the prosecution evade its own constitutional restrictions on its powers by turning the grand jury into its agents?

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[2] As Mr. Justice Black said in *In re Groban*, 352 U. S. 330, 346–347:

"The traditional English and American grand jury is composed of 12 to 23 members selected from the general citizenry of the locality where the alleged crime was committed. They bring into the grand jury room the experience, knowledge and viewpoint of all sections of the community. They have no axes to grind and are not charged personally with the administration of the law. No one of them is a prosecuting attorney or law-enforcement officer ferreting out crime. It would be very difficult for officers of the state seriously to abuse or deceive a witness in the presence of the grand jury. Similarly the presence of the jurors offers a substantial safeguard against the officers' misrepresentation, unintential or otherwise, of the witness' statements and conduct before the grand jury. The witness can call on the grand jurors if need be for their normally unbiased testimony as to what occurred before them."

Although that excerpt is from a dissent on the particular facts of the case, there could be no disagreement as to the accuracy of the description of the grand jury's historical function.

The tendency is for government to use shortcuts in its search for instruments more susceptible to its manipulation than was the historic grand jury. See *Hannah* v. *Larche*, 363 U. S. 420, 505 (dissenting opinion); *Jenkins* v. *McKeithen*, 395 U. S. 411.

Are we to allow the Government to usurp powers that were granted to the people by Magna Carta and codified in our Constitution? That will be the result of the majority opinion unless we continue to apply to the grand jury the protection of the Fourth Amendment.

As the Court stated in *Hale* v. *Henkel*, 201 U. S. 43, 59, "the most valuable function of the grand jury" was "to stand between the prosecutor and the accused, or to determine whether the charge was founded upon credible testimony or was dictated by malice or personal illwill."

The Court held in that case that the Fourth Amendment was applicable to grand jury proceedings and that a sweeping all-inclusive subpoena was "equally indefensible as a search warrant would be if couched in similar terms." *Id.*, 77.

Of course, the grand jury can require people to testify. *Hale* v. *Henkel* makes plain that proceedings before the grand jury do not carry all of the impedimenta of a trial before a petit jury. To date the grand jury cases have involved only testimonial evidence. To say, as the Government suggests, that nontestimonial evidence is free from any restraint imposed by the Fourth Amendment is to give those, who today manipulate grand juries, vast and uncontrollable power.

The executive, acting through a prosecutor, could not have obtained these exemplars as he chose, for as stated by the Court of Appeals for the Eighth Circuit, "We conclude that the taking of the handwriting exemplars . . . was a search and seizure under the Fourth Amendment." *United States* v. *Harris*, 453 F. 2d 1317, 1319. As *Katz* v. *United States*, *supra*, makes plain the searches that may be made without prior approval by judge or magistrate are "subject only to a few specifically established and well-delineated exceptions." 389 U. S., at 357.

The showing required by the Court of Appeals in the *Mara* case was that the Government's showing of need

for the exemplars be "reasonable," which "is not necessarily synonymous with probable cause." 454 F. 2d 580, 584. When we come to grand juries, probable cause in the strict Fourth Amendment meaning of the term does not have in it the same ingredients pointing toward guilt as it does in the arrest and trial of people. In terms of probable cause in the setting of the grand jury, the question is whether the exemplar sought is in some way connected with the suspected criminal activity under investigation. Certainly less than that showing would permit the Fourth Amendment to be robbed of all of its vitality.

In the *Mara* case the prosecutor submitted to the District Court an affidavit of a Government investigator stating the need for the exemplar based on its investigation. The District Court passed on the matter *in camera*, not showing the affidavit to either petitioner or his counsel. The Court of Appeals, relying on *Alderman* v. *United States*, 394 U. S. 165, 183, held that in such cases there should be an adversary proceeding. 454 F. 2d, at 582–583. If "reasonable cause" is to play any function in curbing the executive appetite to manipulate grand juries, there must be an opportunity for a showing that there was no "reasonable cause." As we stated in *Alderman:* "Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands." 394 U. S., at 184.

The District Court in the *Dionisio* case went part way by allowing the witness to have his counsel present when the voice exemplars were prepared in the prosecutor's office. 442 F. 2d, at 278. The Court of Appeals acted

in a traditionally fair way when it ruled that the reasonableness of a prosecutor's request for exemplars be put down for an adversary hearing before the District Court. It would be a travesty of justice to allow the prosecutor to do under the cloak of the grand jury what he could not do on his own.

In view of the disposition which I would make of these cases, I need not reach the Fifth Amendment question. But lest there be any doubt as to my position, I adhere to my dissents in *United States* v. *Wade*, 388 U. S. 218, 243, and in *Schmerber* v. *California*, 384 U. S. 757, 772–779, to the effect that the Fifth Amendment is not restricted to testimonial compulsion.

SUPREME COURT OF THE UNITED STATES

Nos. 71–229 AND 71–850

United States, Petitioner, 71–229 *v.* Antonio Dionisio. United States, Petitioner, 71–850 *v.* Richard J. Mara aka Richard J. Marasovich.	On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 22, 1973]

MR. JUSTICE MARSHALL, dissenting.

I

The Court considers *United States* v. *Wade*, 388 U. S. 218, 221–223 (1967), and *Gilbert* v. *California*, 388 U. S. 263, 265–267 (1967), dispositive of respondent Dionisio's contention that compelled production of a voice exemplar would violate his Fifth Amendment privilege against compulsory self-incrimination. Respondent Mara also argued below that compelled production of the handwriting and printing exemplars sought from him would violate his Fifth Amendment privilege. I assume the Court would consider *Wade* and *Gilbert* to be dispositive of that claim as well.[1] The Court reads those cases as holding that voice and handwriting exemplars may be sought for the exclusive purpose of measuring "the physi-

[1] Before this Court respondent Mara has argued only that the Government may be seeking the handwriting exemplars to obtain not merely identification evidence, but incriminating "testimonial" evidence. I certainly agree with the Court that if respondent's contention proves correct, he will be entitled to assert his Fifth Amendment privilege.

cal properties" of the witness' voice or handwriting without running afoul of the Fifth Amendment privilege. *Ante*, at —. Such identification evidence is not within the purview of the Fifth Amendment, the Court says, for, at least since *Schmerber* v. *California*, 384 U. S. 757, 764 (1966), it has been clear that while "the privilege is a bar against compelling 'communications' or 'testimony,' . . . compulsion which makes a suspect or accused the source of 'real or physical evidence' does not violate it."

I was not a Member of this Court when *Wade* and *Gilbert* were decided. Had I been, I would have found it most difficult to join those decisions insofar as they dealt with the Fifth Amendment privilege. Since, as I discuss in Part II, I consider the Fourth Amendment to require affirmance of the decisions below in these cases, I need not rely at this time upon the Fifth Amendment privilege. Nevertheless, I feel constrained to express here at least my serious reservations concerning the Fifth Amendment portions of *Wade* and *Gilbert*, since those decisions are so central to the Court's result today.

The root of my difficulty with *Wade* and *Gilbert* is the testimonial evidence limitation that has been imposed upon the Fifth Amendment privilege in the decisions of this Court. That limitation is at odds with what I have always understood to be the function of the privilege. I would, of course, include testimonial evidence within the privilege, but I have grave difficulty drawing a line there. For I cannot accept the notion that the Government can compel a man to cooperate affirmatively in securing incriminating evidence when that evidence could not be obtained without the cooperation of the suspect. Indeed, until *Wade* and *Gilbert*, the Court had never carried the testimonial limitation so far as to allow law enforcement officials to enlist an in-

dividual's overt assistance—that is, to enlist his will—in incriminating himself. And I remain unable to discern any substantial constitutional footing on which to rest that limitation on the reach of the privilege.

Certainly it is difficult to draw very much support for the testimonial limitation from the language of the Amendment itself. The Fifth Amendment provides that "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." Nowhere is the privilege explicitly restricted to testimonial evidence. To read such a limitation into the privilege through its reference to "witness" is just the sort of crabbed construction of the provision that this Court long eschewed. Thus, some 80 years ago the Court rejected the contention that a grand jury witness could not invoke the privilege because it applied, in terms, only in a "criminal case." *Counselman* v. *Hitchcock*, 142 U. S. 547, 562 (1892). The Court emphasized that the privilege "is as broad as the mischief against which it seeks to guard." *Ibid.* Even earlier, the Court, in holding that the privilege could be invoked in the context of a civil forfeiture proceeding, had warned that

> "constitutional provisions for the security of the person and property should be construed liberally. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance." *Boyd* v. *United States*, 116 U. S. 616, 635 (1886).

Moreover, *Boyd* itself, which involved a subpoena directed at private papers, makes clear that "witness" is not to be restricted to the act of giving oral testimony against oneself. Rather, that decision suggests what I believe to be the most reasonable construction of the protection afforded by the privilege—namely, protection

against being "compell[ed] . . . to furnish evidence against" oneself, *id.*, at 637. See also *Schmerber* v. *California*, 384 U. S., at 776–777 (Black, J., dissenting).

Such a construction is dictated by the purpose of the privilege. In part, of course, the privilege derives from the view that certain forms of compelled evidence are inherently unreliable. See, *e. g.*, *In re Gault*, 387 U. S. 1, 47 (1967). But the privilege—as a constitutional guarantee subject to invocation by the individual—is obviously far more than a rule concerned simply with the probative force of certain evidence. Its roots "tap the basic stream of religious and political principle [and reflect] the limits of the individual's attornment to the state . . . ." *Ibid.* Its "constitutional foundation . . . is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a 'fair state-individual balance,' to require the government 'to shoulder the entire load,' . . . , to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth." *Miranda* v. *Arizona*, 384 U. S. 436, 460 (1966). Cf. also *Rogers* v. *Richmond*, 365 U. S. 534, 540–541 (1961). It is only by prohibiting the Government from compelling an individual to cooperate affirmatively in securing incriminating evidence which could not be obtained without his active assistance, that "the inviolability of the human personality" is assured. In my view, the testimonial limitation on the privilege simply fails to take account of this purpose.

The root of the testimonial limitation seems to be Mr. Justice Holmes' opinion for the Court in *Holt* v. *United States*, 218 U. S. 245 (1910). In *Holt*, the defendant challenged the admission at trial of certain testimony that a blouse belonged to the defendant. A witness

testified that defendant put on the blouse and that it fitted him. The defendant argued that this testimony violated his Fifth Amendment privilege because he had acted under duress. In the course of disposing of the defendant's argument, Justice Holmes said that "the prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material." *Id.*, at 252–253. This remark can only be considered *dictum*, however, for the case arose before this Court established the rule that illegally seized evidence may not be admitted in federal court, see *Weeks* v. *United States*, 232 U. S. 383 (1914), and thus, Holt's claim of privilege was ultimately disposed of simply on the ground that "when [a man] is exhibited, whether voluntarily or by order, and even if the order goes too far, the evidence, if material, is competent. *Adams* v. *New York*, 192 U. S. 585." 218 U. S., at 253.

With its decision in *Schmerber*, however, the Court elevated the *dictum* of *Holt* to full constitutional stature. Justice Holmes' language was central to the Court's conclusion that the taking of a blood sample, over the objection of the individual, to determine alcoholic content was not barred by the Fifth Amendment privilege since the resulting blood test evidence "was neither [the individual's] testimony nor evidence relating to some communicative act . . . ." 384 U. S., at 765. Indeed, the Court appeared to consider it established since *Holt* that the Fifth Amendment privilege extended only to " 'testimony' " or " 'communications,' " but not to " 'real or physical evidence,' " *id.*, at 764; and this "established" principle was sufficient, for the Court, to dispose of any "loose dicta" in *Miranda* which might suggest a more extensive purpose for the privilege.

After *Schmerber*, *Wade* and *Gilbert* were relatively easy steps for a Court focusing exclusively on the nature of the evidence compelled. Thus, the Court indicated that "compelling Wade to speak within hearing distance of the witnesses, even to utter words purportedly uttered by the robber," was "no different from compelling Schmerber to provide a blood sample or Holt to wear the blouse." 388 U. S., at 222. Similarly, in *Gilbert*, 388 U. S., at 266–267, the Court reasoned that "[a] mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying characteristic outside [the privilege's] protection."

Yet if we look beyond the testimonial limitation, *Wade* and *Gilbert* clearly were not direct and easy extensions of *Schmerber* and *Holt*. For it is only in *Wade* and *Gilbert* that the Court, for the first time, held in effect that an individual could be compelled to give to the State evidence against himself which could be secured only through his affirmative cooperation—that is, "to accuse himself by a volitional act which differs only in degree from compelling him to act out the crime," *Wade* v. *United States*, 388 U. S., at 261 (Fortas, J., dissenting). The voice and handwriting samples sought in *Wade* and *Gilbert* simply could not be obtained without the individual's active cooperation. *Holt* and *Schmerber* were certainly not such cases. In those instances the individual was required at most to submit passively to a blood test or to the fitting of a shirt. Whatever the reasoning of those decisions, I do not understand them to involve the sort of interference with an individual's personality and will that the Fifth Amendment privilege was intended to prevent. To be sure, in situations such as those presented in *Holt* and *Schmerber* the individual may resist and be physically subdued, and in that sense, compulsion may be employed. Or, alternatively, the individual in those situations may elect to yield to the

threat of contempt and cooperate affirmatively with his accusers eliminating the need for force, and in that sense, his will may be subverted. But in neither case is the intrusion an individual's dignity the same or as severe as the affront which occurs when the state secures from him incriminating evidence which can be obtained *only* by enlisting the cooperation of his will. Thus, I do not necessarily consider the results in *Holt* and *Schmerber* to be inconsistent with the purpose and proper reach of the Fifth Amendment privilege.[2]

But so long as we have a Constitution which protects at all costs the integrity of individual volition against subordinating state power, *Wade* and *Gilbert* must be viewed as legal anomalies. As Mr. Justice Fortas, joined by MR. JUSTICE DOUGLAS and the Chief Justice, argued on the day those cases were decided:

> "Our history and tradition teach and command that an accused may stand mute. The privilege means just that; not less than that. According to the Court, an accused may be jailed—indefinitely—until he is willing to say, for an identifying audience, whatever was said in the course of the Commission of the crime. Presumably this would include, 'Your money or your life'—or perhaps, words of assault in a rape case. This is intolerable under our constitutional system." *United States* v. *Wade*, 388 U. S., at 260. See also *Gilbert* v. *California*, 388 U. S., at 291–292 (Fortas, J., dissenting).

I fear the Court's decisions today are further illustrations of the extent to which the Court has gone astray

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[2] This is not to say that, apart from the Fifth Amendment privilege, there might not be, serious due process problems with physical compulsion applied to an individual's person to secure identifying evidence against his will. Cf. *Rochin* v. *California*, 342 U. S. 165 (1952). But cf. *Breithaupt* v. *Abram*, 352 U. S. 432 (1957).

in defining the reach of the Fifth Amendment privilege and has lost touch with the Constitution's concern for the "inviolability of the human personality." In both these cases, the Government seeks to secure possibly incriminating evidence which can be acquired only with respondents' affirmative cooperation. Thus, even if I did not consider the Fourth Amendment to require affirmance of the decisions of the Court of Appeals, I would nevertheless find it extremely difficult to accept a reversal of those decisions in the face of what seems to me the proper construction of the Fifth Amendment privilege.

II

The Court concludes that the exemplars sought from the respondents are not protected by the Fourth Amendment because respondents have surrendered their expectation of privacy with respect to voice and handwriting by knowingly exposing these to the public, see *Katz* v. *United States*, 389 U. S. 347, 351 (1967). But even accepting this conclusion, it does not follow that the investigatory seizures of respondents, accomplished through the use of subpoenas ordering them to appear before the grand jury—and thereby necessarily interfering with their personal liberty—are outside the protection of the Fourth Amendment. To the majority, though, "[i]t is clear that a subpoena to appear before a grand jury is not a 'seizure' in the Fourth Amendment sense, even though that summons may be inconvenient or burdensome." *Ante*, at —. With due respect, I find nothing "clear" about so sweeping an assertion.

There can be no question that investigatory seizures effected by the police are subject to the constraints of the Fourth and Fourteenth Amendments. In *Davis* v. *Mississippi*, 394 U. S. 721, 727 (1969), the Court observed that only the Term before, in *Terry* v. *Ohio*, 392 U. S. 1, 19 (1968), it had rejected "'the notions that the

Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search." '" As a result, the Court held in *Davis* that investigatory seizures for the purpose of obtaining fingerprints are subject to the Fourth Amendment even though fingerprints themselves are not protected by that Amendment.[3] The Court now seems to distinguish *Davis* from the present cases, in part, on the ground that in *Davis* the authorities engaged in a lawless dragnet of a large number of Negro youths. Certainly, the peculiarly offensive exercise of investigatory powers in *Davis* heightened the Court's sensitivity to the dangers inherent in Mississippi's argument that the Fourth Amendment was not applicable to investigatory seizures. But the presence of a dragnet was not the constitutional determinant there; rather, it was police interference with the petitioner's own liberty that brought the Fourth and Fourteenth Amendments into play, as should be evident from the Court's substantial reliance on *Terry* which involved no dragnet.

Like *Davis*, the present cases involve official investigatory seizures which interfere with personal liberty. The Court considers dispositive, however, the fact that the seizures were effected by the grand jury, rather than the police. I cannot agree.

First, in *Hale* v. *Henkel*, 201 U. S. 43, 76 (1906), the Court held that a subpoena *duces tecum* ordering "the production of books and papers [before a grand jury] may constitute an unreasonable search and seizure within the Fourth Amendment," and on the particular facts of the case, it concluded that the subpoena was "far too

[3] We left open the further question whether such an investigatory seizure might, under certain circumstances, be made on information insufficient to establish probable cause to arrest. See 394 U. S., at 727–728.

sweeping in its terms to be regarded as reasonable." Considered alone, *Hale* would certainly seem to carry a strong implication that a subpoena compelling an individual's personal appearance before a grand jury, like a subpoena ordering the production of private papers, is subject to the Fourth Amendment standard of reasonableness. The protection of the Fourth Amendment is not, after all, limited to personal "papers," but extends also to "persons," "houses," and "effects." It would seem a strange hierarchy of constitutional values that would afford papers more protection from arbitrary governmental intrusion than people.

The Court, however, offers two interrelated justifications for excepting grand jury subpoenas directed at "persons," rather than "papers," from the constraints of the Fourth Amendment. These are an "historically grounded obligation of every person to appear and give his evidence before the grand jury," *ante*, at —, and the relative unintrusiveness of the grand jury subpoena on an individual's liberty.

In my view, the Court makes more of history than is justified. The Court treats the "historically grounded obligation" which it now discerns as extending to all "evidence," whatever its character. Yet, so far as I am aware, the obligation "to appear and give evidence" has heretofore been applied by this Court only in the context of testimonial evidence, either oral or documentary. Certainly the decisions relied upon by the Court, despite some dicta, have not recognized an obligation of a broader sweep.

Blair v. *United States*, 250 U. S. 273, 281 (1919), indicated only that "the giving of *testimony* and the attendance upon court or grand jury in order to *testify* are public duties which every person . . . is bound to perform upon being properly summoned . . . ." (Emphasis added.) Similarly, just last Term, the Court reaffirmed

only that "[t]he power of government to compel persons to *testify* in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence," nothing more. *Kastigar* v. *United States*, 406 U. S. 441, 443 (1972) (emphasis added). And, Chief Justice Hughes described "one of the duties which the citizen owes to his government" to be that of "attending its courts and giving his *testimony* whenever his is properly summoned . . . ." *Blackmer* v. *United States*, 284 U. S. 421, 438 (1932). In short, history, at least insofar as heretofore reflected in this Court's cases, does not necessarily establish an obligation to appear before a grand jury for other than testimonial purposes. See *Branzburg* v. *Hayes*, 408 U. S. 665 (1972); *Ullmann* v. *United States*, 350 U. S. 422, 439 n. 15 (1956); *Piemonte* v. *United States*, 367 U. S. 556, 559 n. 2 (1961); *Wilson* v. *United States*, 221 U. S. 361, 372 (1911); *Hale* v. *Henkel*, 201 U. S., at 65. See also *United States* v. *Bryan*, 339 U. S. 323, 331 (1950); *Brown* v. *Walker*, 161 U. S. 591, 600 (1896); *Garland* v. *Torre*, 259 F. 2d 545, 549 (CA2), cert. denied, 358 U. S. 910 (1958).

In the present cases—as the Court itself argues in its discussion of the Fifth Amendment privilege—it was not testimony that the grand juries sought from respondents, but physical evidence. The Court glosses over this important distinction from its prior decisions, however, by artificially bifurcating its analysis of what is taking place in these cases—that is, by effectively treating what is done with individuals once they are before the grand jury as irrelevant in determining what safeguards are to govern the procedures by which they are initially compelled to appear. Nonetheless, the fact remains that the historic exception to which the Court resorts is not necessarily as broad as the context in which it is now employed. Hence, I believe that the question we must consider is whether an extension of that exception is warranted, and if so, under what conditions.

In approaching these questions, we must keep in mind that "[t]his Court has consistently asserted that the rights of privacy and personal security protected by the Fourth Amendment '. . . are to be regarded as of the very essence of constitutional liberty . . . .'" *Harris* v. *United States*, 331 U. S. 145, 150 (1947). As a rule, the Amendment stands as an essential bulwark against arbitrary and unreasonable governmental intrusion—whatever its form, whatever its purpose, see, *e. g.*, *Camara* v. *Municipal Court*, 387 U. S. 523 (1967)—upon the privacy and liberty of the individual, see, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968); *Jones* v. *United States*, 362 U. S. 257, 261 (1960). Given the central role of the Fourth Amendment in our scheme of constitutional liberty, we should not casually assume that governmental action which may result in interference with individual liberty is excepted from its requirements. Cf. *Coolidge* v. *New Hampshire*, 403 U. S. 443, 455 (1971); *Katz* v. *United States*, 389 U. S. 347, 357 (1967); *Camara* v. *Municipal Court*, 387 U. S., at 528–529. The reason for any exception to the coverage of the Amendment must be fully understood and the limits of the exception should be defined accordingly. To do otherwise would create a danger of turning the exception into the rule and lead to the "impairment of the rights for the protection of which [the Amendment] was adopted." *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357 (1931); cf. *Grau* v. *United States*, 287 U. S. 124, 128 (1932).

I

The Court seems to reason that the exception to the Fourth Amendment for grand jury subpoenas directed at persons is justified by the relative unintrusiveness of the grand jury process on an individual's liberty. The Court, adopting Chief Judge Friendly's analysis in *United States* v. *Doe (Schwartz)*, 457 F. 2d 895, 898 (CA2 1972), suggests that arrests or even investigatory

"stops" are inimical to personal liberty because they may involve the use of force; they may be carried out in demeaning circumstances; and at least an arrest may yield the social stigma of a record. By contrast, we are told, a grand jury subpoena is a simple legal process, which is served in an unoffensive manner; it results in no stigma; and a convenient time for appearance may always be arranged. The Court would have us believe, in short, that, unlike an arrest or an investigatory "stop," a grand jury subpoena entails little more inconvenience than a visit to an old friend. Common sense and practical experience indicate otherwise.

It may be that service of a grand jury subpoena does not involve the same potential for momentary embarrassment as does an arrest or investigatory "stop."[4] But this difference seems inconsequential in comparison to the substantial stigma which—contrary to the Court's assertion—may result from a grand jury appearance as well as from an arrest or investigatory seizure. Public knowledge that a man has been summoned by a federal grand jury investigating, for instance, organized criminal activity can mean loss of friends, irreparable injury to business, and tremendous pressures on one's family life. Whatever nice legal distinctions may be drawn between police and prosecutor, on the one hand, and the grand jury, on the other, the public often treats an appearance before a grand jury as tantamount to a visit to the station house. Indeed, the former is frequently more damaging than the latter, for a grand jury appearance has an air of far greater gravity than a brief visit "downtown" for a "talk." The Fourth Amendment was placed in our Bill of Rights to protect the individual citizen from such potentially disruptive governmental intrusion into his private life unless conducted reasonably and with sufficient cause.

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[4] But cf. *Davis* v. *Mississippi*, 394 U. S., at 727.

Nor do I believe that the constitutional problems inherent in such governmental interference with an individual's person are substantially alleviated because one may seek to appear at a "convenient time." In *Davis* v. *Mississippi*, 394 U. S., at 727, it was recognized that an investigatory detention effected by the police "need not come unexpectedly or at an inconvenient time." But this fact did not suggest to the Court that the Fourth Amendment was inapplicable; it was considered to affect, at most, the type of showing a State would have to make to justify constitutionally such a detention, see *ibid.* No matter how considerate a grand jury may be in arranging for an individual's appearance, the basic fact remains that his liberty has been officially restrained for some period of time. In terms of its effect on the individual, this restraint does not differ meaningfully from the restraint imposed on a suspect compelled to visit the police station house. Thus, the nature of the intrusion on personal liberty caused by a grand jury subpoena cannot, without more, be considered sufficient basis for denying respondents the protection of the Fourth Amendment.

Of course, the Fourth Amendment does not bar all official seizures of the person, but only those that are unreasonable and are without sufficient cause. With this in mind, it is possible at least to explain, if not justify, the failure to apply the protection of the Fourth Amendment to grand jury subpoenas requiring individuals to appear and *testify*. Thus, while it is true that we have traditionally given the grand jury broad investigatory powers, particularly in terms of compelling the appearance of persons before it, see, *e. g.*, *Branzburg* v. *Hayes*, 408 U. S., at 688, 701–702; *Blair* v. *United States*, 250 U. S., at 282, it must be understood that we have done so in heavy reliance on certain essential assumptions.

Certainly the most celebrated function of the grand jury is to stand between the Government and the citizen

and thus to protect the latter from harassment and unfounded prosecution. See, *e. g.*, *Wood* v. *Georgia*, 370 U. S. 375, 390 (1962); *Hoffman* v. *United States*, 341 U. S. 479, 485 (1951); *Ex parte Bain*, 121 U. S. 1, 11 (1887). The grand jury does not shed those characteristics which give it insulating qualities when it acts in its investigative capacity. Properly functioning, the grand jury is to be the servant of neither the Government nor the courts, but of the people. *Hale* v. *Henkel*, 201 U. S., at 61. As such, we assume that it comes to its task without bias or self-interest. Unlike the prosecutor or policeman, it has no election to win or executive appointment to keep. The anticipated neutrality of the grand jury, even when acting in its investigative capacity, may perhaps be relied upon to prevent unwarranted interference with the lives of private citizens and to ensure that the grand jury's subpoena powers over the person are exercised in only a reasonable fashion. Under such circumstances, it may be justifiable to give the grand jury broad personal subpoena powers that are outside the purview of the Fourth Amendment, for—in contrast to the police—it is not likely that it will abuse those powers.[5] Cf. *Costello* v. *United States*, 350 U. S. 359, 362 (1956); *Stirone* v. *United States*, 361 U. S. 212, 218 (1960).

Whatever the present day validity of the historical assumption of neutrality which underlies the grand jury process,[6] it must at least be recognized that if a grand jury is deprived of the independence essential to the assumption of neutrality—if it effectively surrenders that independence to a prosecutor—the dangers of ex-

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[5] When the grand jury does overstep its power and acts maliciously, courts are certainly not totally without power to control it. See n. 9, *infra*.

[6] Indeed, the Court today acknowledges that "[t]he grand jury may no longer always serve its historic role as a protective bulwark." *Ante*, at —.

cessive and unreasonable official interference with personal liberty are exactly those which the Fourth Amendment was intended to prevent. So long as the grand jury carries on its investigatory activities only through the mechanism of testimonial inquiries, the danger of such official usurpation of the grand jury process may not be unreasonably great. Individuals called to testify before the grand jury will have available their Fifth Amendment privilege against self-incrimination. Thus, at least insofar as incriminating information is sought directly from a particular criminal suspect,[7] the grand jury process would not appear to offer law enforcement officials a substantial advantage over ordinary investigative techniques.

But when we move beyond the realm of a grand jury investigations limited to testimonial inquiries, as the Court does today, the danger increases that law enforcement officials may seek to usurp the grand jury process for the purpose of securing incriminating evidence from a particular suspect through the simple expedient of a subpoena. In view of the Court's Fourth Amendment analysis of the respondents' expectations of privacy concerning their handwriting and voice exemplars and in view of the testimonial evidence limitation on the reach of the Fifth Amendment privilege, there is essentially no objection to be made once a suspect is before the grand jury and exemplars are requested. Thus, if the grand jury may summon criminal suspects for such purposes without complying with the Fourth Amendment, it will obviously present an attractive investigative tool to

[7] Of course, the grand jury does provide an important mechanism for investigating possible criminal activity through witnesses who may have first-hand knowledge of the activities of others. But given the Fifth Amendment privilege, it does not follow that the grand jury is a useful mechanism for securing incriminating testimony from the suspect himself.

prosecutor and police. For what law enforcement officers could not accomplish directly themselves after our decision in *Davis* v. *Mississippi*, they may now accomplish indirectly through the grand jury process.

Thus, the Court's decisions today can serve only to encourage prosecutorial exploitation of the grand jury process, at the expense of both individual liberty and the traditional neutrality of the grand jury. Indeed, by holding that the grand jury's power to subpoena these respondents for the purpose of obtaining exemplars is completely outside the purview of the Fourth Amendment, the Court fails to appreciate the essential difference between real and testimonial evidence in the context of these cases, and thereby hastens the reduction of the grand jury into simply another investigative device of law enforcement officials. By contrast, the Court of Appeals, in proper recognition of these dangers, imposed narrow limitations on the subpoena power of the grand jury which are necessary to guard against unreasonable official interference with individual liberty but which would not impair significantly the traditional investigatory powers of that body.

The Court of Appeals in *Mara*, No. 71–850, did not impose a requirement that the Government establish probable cause to support a grand jury's request for exemplars. It correctly recognized that "examination of witnesses by a grand jury need not be preceded by a formal charge against a particular individual," since the very purpose of the grand jury process is to ascertain probable cause. See, *e. g.*, *Blair* v. *United States*, 250 U. S., at 282; *Hendricks* v. *United States*, 223 U. S. 178, 184 (1912). Consistent with the Court's decision in *Hale* v. *Henkel*, it ruled only that the request for physical evidence such as exemplars should be subject to a showing of reasonableness. See 201 U. S., at 76. This "reasonableness" requirement has previously been ex-

plained by this Court, albeit in a somewhat different context, to require a showing by the Government that: (1) "the investigation is authorized by Congress"; (2) the investigation "is for a purpose Congress can order"; (3) the evidence sought is "relevant"; and (4) the request is "adequate, but not excessive, for the purposes of the relevant inquiry." See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209 (1946). This was the interpretation of the "reasonableness" requirement properly adopted by the Court of Appeals. See 454 F. 2d 580, 584–585. And, in elaborating on the requirement that the request not be "excessive," it added that the Government would bear the burden of showing that it was not conducting "a mere general fishing expedition under grand jury sponsorship." *Id.*, at 585.

These are not burdensome limitations to impose on the grand jury when it seeks to secure physical evidence, such as exemplars, that has traditionally been gathered directly by law enforcement officials. The essence of the requirement would be nothing more than a showing that the evidence sought is relevant to the purpose of the investigation and that the particular grand jury is not the subject of prosecutorial abuse—a showing that the Government should have little difficulty making, unless it is in fact acting improperly. Nor would the requirement interfere with the power of the grand jury to call witnesses before it, to take their testimony, and to ascertain their knowledge concerning criminal activity. It would only discourage prosecutorial abuse of the grand jury process.[8] The "reasonableness" requirement would

[8] It is, of course, true that a suspect may be called for the dual purposes of testifying and obtaining physical evidence. Obviously, his liberty would be interfered with merely as a result of appearing and testifying, a situation in which the Fourth Amendment has not heretofore been applied. But it does not follow that the application of the Fourth Amendment is inappropriate when a suspect

do no more in the context of these cases than the Constitution compels—protect the citizen from unreasonable and arbitrary governmental interference, and ensure that the broad subpoena powers of the grand jury which the Court now recognizes are not turned into a tool of prosecutorial oppression.[9]

In *Dionisio*, No. 71–229, the Government has never made any showing that would establish the "reasonableness" of the grand jury's request for a voice sample. In *Mara*, No. 71–850, the Government submitted an affidavit to the District Court to justify the request for the handwriting and printing exemplars. But it was not sufficient to meet the requirements set down by the Court of Appeals. See 454 F. 2d, at 584–585. Moreover, the affidavit in *Mara* was reviewed by the District Court *in camera* in the absence of respondent Mara and his

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is subpoenaed for these dual purposes. The application of the Fourth Amendment is necessary to discourage unreasonable use of the grand jury process by law enforcement officials. While the Fifth Amendment privilege at least contributes to that goal in the context of a subpoena intended to secure both testimonial and physical evidence, it is essential also to apply the Fourth Amendment when the suspect is requested to give physical evidence. Otherwise, subpoenaing suspects for the purpose of testifying would provide a simple guise by which law enforcement officials might secure physical evidence without complying with the Fourth Amendment, and thus the deterrent effect on such officials sought by applying the Amendment to grand jury subpoenas seeking physical evidence would be lost.

[9] It may be that my differences with the Court are not as great as may first appear, for despite the Court's rejection of the applicability of the Fourth Amendment to grand jury subpoenas directed at "persons," it clearly recognizes that abuse of the grand jury process is not outside a court's control. See *ante*, at —. Besides the Fourth Amendment, the First Amendment and both the Due Process Clause and the privilege against compulsory self-incrimination contained in the Fifth Amendment erect substantial barriers to "the transformation of the grand jury into an instrument of oppression." *Ibid.* See also *Hale* v. *Henkel*, 201 U. S., at 65; *United States* v. *Doe* (*Schwartz*), 457 F. 2d., at 899.

counsel. Such *ex parte* procedures should be the exception, not the rule.

> "Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment . . . demands." [10] *Alderman* v. *United States*, 394 U. S. 165, 184 (1967).

See also *Dennis* v. *United States*, 384 U. S. 855, 873–875 (1966). Consequently, I agree with the Court of Appeals that the reasonableness of a request for an exemplar should be tested in an adversary context.[11]

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[10] As the Court of Appeals observed:

"[D]ifficulties in locating a suspect or possessor of evidence, the problems of apprehension, the destructibility of evidence, the need for promptness to protect the public against violence and to prevent repetition of criminal conduct necessitates the *ex parte* nature of the warrant issuance proceeding." 454 F. 2d, at 583.

But these considerations do not apply in the context of a grand jury request for exemplars. Nevertheless, the Government contends that the traditional secrecy of the grand jury process dictates that any preliminary showing required of it should be made in an *ex parte*, *in camera* proceeding. However, the interests served by the secrecy of the grand jury process can be adequately protected without such a drastic measure, see *id.*, at 584.

[11] The Court suggests that any sort of showing which might be required of the Government in cases such as these "would saddle a grand jury with mini-trials" and "would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws." *Ante*, at —. But constitutional rights cannot be sacrificed simply for expedition and simplicity in the administration of the criminal laws. Moreover, a requirement that the Government establish the "reasonableness" of the request for an exemplar would hardly be so burdensome as the Court suggests. As matters stand, if the suspect resists the request, the Government must seek a judicial order directing that he comply

I would therefore affirm the Court of Appeals' decisions reversing the judgments of contempt against respondents and order the cases remanded to the District Court to allow the Government an opportunity to make the requisite showing of "reasonableness" in each case. To do less is to invite the very sort of unreasonable governmental intrusion on individual liberty that the Fourth Amendment was intended to prevent.

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with the request. Thus, a formal judicial proceeding is already necessary. The question whether the request is "reasonable" would simply be one further matter to consider in such a proceeding.